



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

SATS No. NM-048-FOR; Docket ID OSM-2010-0014

New Mexico Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the New Mexico regulatory program (the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). New Mexico proposed non-substantive editorial revisions to its rules; substantive revisions and additions to rules concerning ownership and control; and substantive revisions to one rule about retention of sedimentation ponds. New Mexico

revised its program to be consistent with the corresponding Federal regulations and to clarify ambiguities.

**EFFECTIVE DATE:** [Insert date of publication in the Federal Register]

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**SUPPLEMENTARY INFORMATION:**

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- II. Submission of the Proposed Amendment
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**I. Background on the New Mexico Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations

on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, Federal Register (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.10, 931.11, 931.13, 931.15, 931.16, and 931.30.

## **II. Submission of the Proposed Amendment**

By letter dated September 1, 2010, New Mexico submitted an amendment to its program (SATS No. NM-048-FOR, Docket ID OSM-2010-0014-0007) under SMCRA (30 U.S.C. 1201 et seq.). New Mexico sent the amendment (1) in response to a September 3, 2009, **OSM** letter (Docket ID OSM-2010-0014-0003), concerning our ownership and control regulations, consistent with 30 CFR 732.17(c); and

(2) to include proposed program changes made at its own initiative.

We announced receipt of the proposed amendment in the January 25, 2011, Federal Register (76 FR 4266). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Docket ID OSM-2010-0014-0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 24, 2011. We received two Federal agency comment letters.

### **III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

#### **A. Minor Revisions to New Mexico's Rules**

New Mexico proposed minor wording, editorial, punctuation, and grammatical changes to the following previously-approved rules. 19.8.11.1105.E NMAC (30 CFR 774.11(a)(1)), Review of Permit Applications;

19.8.11.1114 NMAC (30 CFR Part 773.17), Conformance of Permit;

19.8.30.3003.D NMAC (30 CFR 843.14(c)), Service of Notices of Violation and Cessation Orders;

19.8.30.3004.D NMAC (30 CFR 843.15), Informal Hearings;

19.8.31.3103.A NMAC (30 CFR 845.15(a)), Assessment of Separate Violation for Each Day;

19.8.34.3402.F(1) and (2) NMAC (30 CFR 702.11(f)(1) and (2)), Application Requirements and Procedures;

19.8.34.3408.C(2) and (3) NMAC (30 CFR 702.17(c)(2) and (3)), Revocation and Enforcement; and

19.8.35.13 NMAC (30 CFR 761.16(f)), Administrative and Judicial Review of a Valid Existing Rights Determination.

Because these changes are minor non-substantive editorial revisions, we find that they will not make New Mexico's rules less effective than the corresponding Federal regulations and we approve them.

B. Revisions to New Mexico's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

New Mexico proposed additions of or revisions to the following rules concerning ownership and control which contain language that is the same as or similar to the corresponding sections of the Federal regulations.

19.8.11.1120.A through C NMAC (30 CFR 774.12(a) through (c)),  
Addition of Rules Concerning Post-Permit Issuance Information  
Requirements for Permittees,

19.8.11.1121.A through D NMAC (30 CFR 778.9(a), (b), (c) and  
(d)), Addition of Rules Concerning Certifying and Updating  
Existing Permit Application Information, and

19.8.31.3113.A through C NMAC (30 CFR 847.11(a), (b) and (c)),  
Addition of Rules Concerning Criminal Penalties.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations, and we approve them.

C. Revisions to New Mexico's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Ownership and Control. New Mexico submitted revisions of the following rules concerning ownership and control. OSM discusses below all proposed rules which New Mexico proposed to modify so that its program would be no less effective than the counterpart Federal regulations concerning ownership and control, including those rules which provide the authority in the New Mexico program to take enforcement actions against those found to be in positions of ownership and control.

a. 19.8.1.7.K NMAC, Definition of "Knowing and Knowingly" and 19.8.1.7.W(2) NMAC, Definition of "Willful and Willfully" and deletion of the Definition for "Willful Violation." New Mexico proposed new definitions of "knowing and knowingly" and "willful and willfully" at, 19.8.1.7.K NMAC and 19.8.1.7.W(2) NMAC, that are identical to the same counterpart Federal definitions at 30 CFR 701.5. New Mexico proposed inclusion of these definitions in the New Mexico program such that these terms are defined for their use throughout the New Mexico program.

New Mexico also proposed to delete the definition of "willful

violation" at 19.8.1.7.W(2) NMAC; there exists no counterpart Federal program definition.

For these reasons, the Director finds that New Mexico's proposed addition of the definitions for "knowing and knowingly" and "willful and willfully" at 19.8.1.7.K and 19.8.1.7.W(2) NMAC and proposed deletion of the definition for "willful violation" at 19.8.1.7.W(2) NMAC are consistent with and no less effective than the counterpart Federal definitions of "knowing and knowingly" and "willful and willfully" at 30 CFR 701.5.

b. 19.8.1.7.O(8)(a) and (b) NMAC, Definition of "Owned or Controlled and Owns or Controls." New Mexico's proposed definition of "owned or controlled and owns or controls" at 19.8.1.7.O(8)(a) and (b) NMAC includes counterpart language to two of OSM's Federal definitions at 30 CFR 701.5, the definitions for "control or controller" and "own, owner, or ownership."

New Mexico proposed a revision of its definition of "owned or controlled and owns or controls" at 19.8.1.7.O(8)(a) NMAC that is, with one exception, substantively the same as the Federal definition of "control or controller" at 30 CFR 701.5. The exception is that, at 19.8.1.7.O(8)(a) NMAC, New Mexico does not include the operator as a controller in the language. However,



in the definition of "owned or controlled and owns or controls" at 19.8.1.7.0(8)(b)(ii) NMAC, New Mexico does include an operator as a presumed controller.

New Mexico proposed revisions of its definition of "owned or controlled and owns or controls" at 19.8.1.7.0(8)(b)(iv) through (viii) NMAC, which are, with one exception, substantively the same as the counterpart Federal definition of "Own, owner, or ownership" at 30 CFR 701.5. The exception is that, at 19.8.1.7.0(8)(b)(vii) NMAC, New Mexico proposes that ownership be based on owning of record 10 percent or more of the entity, while OSM, in the Federal definition, provides for ownership based on possessing or controlling in excess of 50 percent of the voting securities or other instruments of ownership of an entity. In this respect, New Mexico's definition is more stringent than the Federal definition; however, it is no less effective than the Federal definition in identifying ownership.

New Mexico's existing definition of "owned or controlled and owns or controls" at 19.8.1.7.0(8)(b) NMAC provides that a person, who is identified as an owner, the opportunity to demonstrate that he/she does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted. In addition, New Mexico's existing rules

at 19.8.11.1102 NMAC, 19.8.11.1117 NMAC, and 19.8.11.1118 NMAC are no less effective than the Federal regulations at 30 CFR 773.25, 30 CFR 773.26, and 30 CFR 773.27 in allowing for challenges to ownership or control findings.

For these reasons, the Director finds that New Mexico's proposed definition of "owned or controlled and owns or controls" at 19.8.1.7.0(8)(a) and (b) NMAC is no less effective than the counterpart Federal definitions of "control or controller" and "own, owner, or ownership" at 30 CFR 701.5, and approves it.

c. 19.8.7.701.C(3) NMAC, Identification of Interests.

New Mexico proposed to revise 19.8.7.701.C(3) NMAC to require that a permit application contain, among other things, information specific to the identification of persons whose identification is required by 19.8.11.1120.C NMAC, rather than 19.8.11.1113.D.

New Mexico's proposed 19.8.11.1120 NMAC, concerning post-permit issuance information requirements for permittees, as discussed above, is substantively identical to the counterpart Federal regulations at 30 CFR 774.12(a) through (c). The previously referenced rule at 19.8.11.1113.D NMAC does not exist in New Mexico's program; furthermore, New Mexico's existing rules at

19.8.11.1113 NMAC pertain to conditions of a permit affecting environment, public health and safety, not ownership and control information.

Therefore, New Mexico's proposed revision of 19.8.7.701.C(3) NMAC to reference 19.8.11.1120.C NMAC, ensures that a permit application will contain the most recent information pertaining to ownership and control and eliminates confusion by deleting an inappropriately referenced rule that has nothing to do with applicant ownership and control information.

New Mexico also proposed to revise 19.8.7.701(C) NMAC to require the submission of telephone numbers for persons who own or control the applicant according to the definitions of "owned or controlled and owns or controls" at 19.8.1.107.0 NMAC. As discussed above, the Director finds that New Mexico's proposed definition of "owned or controlled and owns or controls" at 19.8.1.107.0 NMAC is no less effective than the counterpart definitions of "control or controller" and "own, owner, or ownership" at 30 CFR 701.5. New Mexico's proposed revision to require submission of telephone numbers is consistent with the requirement in the Federal regulations at 30 CFR 778.11(d). For any change in persons identified, the Federal regulations under 30 CFR 774.12(c)(1) and by 30 CFR 778.11(d) requires, among

other things, a telephone number.

For these reasons, the Director finds that New Mexico's proposed revisions of 19.8.7.701.C(3) NMAC are no less effective than the counterpart Federal regulations at 30 CFR 774.12(a) through (c) and 30 CFR 778.11(d), and approves them.

d. 19.8.11.1105.F NMAC, Review of Permit Applications for Permit Eligibility. New Mexico proposed revising 19.8.11.1105.F NMAC by adding the requirement for the Director of the New Mexico program, after an applicant's completion of the reporting required by 19.8.7.702 NMAC, to request, no more than five business days before permit issuance, a compliance history report from the applicant violator system (AVS) and make that report part of the AVS record review required by New Mexico's rule at 19.8.11.1116 NMAC. New Mexico's rule at 19.8.7.702.D NMAC requires, after an applicant is notified that his or her application is approved, but before the permit is issued, an applicant to either update the information, concerning compliance information, previously submitted or indicate that no change has occurred in the information. New Mexico's rule at 19.8.11.1116 requires, among other things, that New Mexico must review all reasonably available information concerning violation notices and ownership or control links to determine whether the application

can be approved.

Because New Mexico has revised its rule at 19.8.11.1105.F NMAC, concerning a final compliance review for all permit applications, with references to the reporting requirements of 19.8.7.702.D NMAC and the AVS record review for permit eligibility required by 19.8.11.1116 NMAC, the Director finds that New Mexico's proposed 19.8.11.1105.F NMAC is no less effective in making the permit eligibility determination required by 30 CFR 773.12, and approves it.

The Director notes that New Mexico's 19.8.11.1116.B NMAC, of which New Mexico proposed no revision, requires New Mexico to deny approval of an application if the review conducted discloses any ownership or control link between the applicant and any person cited in a violation notice unless certain actions have been taken (which are specified in 19.8.11.1116.B NMAC). Under the counterpart Federal regulation at 30 CFR 773.12(a), permits may be denied only if an applicant directly (one level down) owns or controls, or if the applicant or operator indirectly controls an entity with an unabated or uncorrected ("outstanding") violation if the control and the violation occurred after November 2, 1988. In this respect, New Mexico's proposed rule at 19.8.11.1105.F NMAC is more stringent, but no less effective

than, the counterpart Federal regulation at 30 CFR 773.12(a).

e. 19.8.11.1119.A through H NMAC, Post-Permit Issuance

Requirements and Other Actions. New Mexico proposed additional rules at 19.8.11.1119.A through H NMAC, concerning post-permit issuance requirements and other actions based on ownership, control, and violation information, that are, with one exception, substantively identical to the counterpart Federal regulations at 30 CFR 774.11(a) through (h). The exception is that New Mexico's proposed rule at 19.8.11.1119.C NMAC is more stringent than the counterpart Federal regulation at 30 CFR 774.11(c), in that the referenced rule at 19.8.11.1116 NMAC, as discussed above, allows for any ownership or control link between the applicant and any person cited in a violation notice to cause finding of permanent permit ineligibility rather than the more limited ownership and control link provided for the Federal regulation referenced at 30 CFR 773.12(a). The proposed New Mexico rules need only meet the minimum requirements of the counterpart Federal regulations; New Mexico may elect to be more stringent.

For this reason, the Director finds that New Mexico's proposed 19.8.11.1119.A through H NMAC are no less effective than the counterpart 30 CFR 774.11(a) through (h), and approves them.

f. 19.8.30.3000.L NMAC, Cessation Orders. New Mexico proposed to revise 19.8.30.3000.L NMAC, concerning persons who must receive New Mexico's written notification of issuance of a cessation order, to require that the notice be sent to any person who has been identified under 19.8.11.1119.F NMAC, rather than 19.8.11.1113.D NMAC. New Mexico's referenced rule at 19.8.11.1119.F specifies, among other things, that New Mexico may, at any time, identify any person who owns or controls all or part of a surface coal mining operation.

New Mexico's proposed rule at 19.8.30.3000.L NMAC also requires that persons identified in 19.8.7.701.C NMAC and 19.8.7.701.D NMAC as owning or controlling the permittee receive the same written notification of the issuance of a cessation order; New Mexico has proposed no revision of these rules. Referenced 19.8.7.701.C NMAC specifies information required to be in a permit application, including a list of outstanding violation notices received prior to the date of the application by any surface coal mining operation that is owned or controlled by either the applicant or any person who owns or controls the applicant under the definition of "owned or controlled and owns or controls" at 19.8.1.107.O NMAC. Referenced 19.8.7.702.D NMAC requires, after an applicant is notified that his or her application is approved, but before the permit is issued, an

applicant to either update the information, concerning compliance information, previously submitted or indicate that no change has occurred in the information.

The counterpart Federal regulation to New Mexico's referenced 19.8.11.3000.L NMAC is 30 CFR 843.11(g), which requires that the Director notify in writing persons identified as an owner or controller of the operation, as defined at 30 CFR 701.5, that a cessation order has been issued.

As discussed above, 19.8.11.1113.D NMAC does not exist in New Mexico's program and New Mexico's existing rules at 19.8.11.1113.A through C pertain to conditions of permit affecting environment, public health and safety (not ownership and control information). Also as discussed above, the Director finds that New Mexico's proposed rules at 19.8.11.1119.A through H NMAC are substantively identical to and no less effective than the counterpart 30 CFR 777.11(a) through (h). In addition, as discussed above, New Mexico's proposed definition of "owned or controlled and owns or controls" at 19.8.1.107.0 NMAC is no less effective than the counterpart definitions of "control or controller" and "own, owner, or ownership" at 30 CFR 701.5.

For these reasons, the Director finds that New Mexico's proposed



revision at 19.8.30.3000.L NMAC causes proposed 19.8.30.3000.L to be no less effective than the counterpart Federal regulation at 30 CFR 843.11(g), in that the proposed reference to 19.8.11.1119.F NMAC will ensure that all people listed as owners or controllers will receive a written notification of the issuance of a cessation order. The Director approves proposed 19.8.30.3000.L NMAC.

g. 19.8.31.3109.A NMAC, Individual Civil Penalties. New Mexico proposed revision of 19.8.31.3109.A NMAC to clarify when the Director of the New Mexico program may assess an individual civil penalty; i.e., the Director may assess an individual civil penalty against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered, or carried out a violation of a permit condition, or a failure or refusal to comply with any order issued under the act. New Mexico proposed this clarification because New Mexico proposed deletion of definition of "willful violation" at 19.8.1.7.W(2) NMAC.

The counterpart Federal regulation at 30 CFR 846.12(a) provides that OSM may assess an individual civil penalty against any corporate director, officer, or agent to a corporate permittee who knowingly and willfully authorized, ordered, or carried out a

violation, failure, or refusal.

New Mexico's proposed rule at 19.8.31.3109.A NMAC is substantively the same as the counterpart Federal regulation at 30 CFR 846.12(a), concerning individual civil penalties. New Mexico's proposed rule differs only in that it provides clarification of the phrase 'a violation, failure or refusal' as used in the counterpart Federal regulation.

For these reasons, the Director finds that New Mexico's proposed revision of 19.8.31.3109.A NMAC is no less effective than the counterpart Federal regulation at 30 CFR 846.12(a), concerning individual civil penalties, and approves it.

h. 19.8.31.3109.A(1), (2) and (3) NMAC, Deletion of definitions of "knowingly", "willfully", and "violation, failure or refusal."

At 19.8.31.3109.A(1), (2), and (3) NMAC, New Mexico proposed to delete the definitions of "knowingly," "willfully," and "violation, failure or refusal".

As discussed above, in finding number C.1.a, New Mexico proposed new definitions of "knowing and knowingly" and "willful and willfully" at, respectively, 19.8.1.7.K NMAC and 19.8.1.7.W(2) NMAC, that are (1) identical to the same counterpart Federal

definitions at 30 CFR 701.5 and (2) defined for their use throughout the New Mexico program. New Mexico's definitions of "knowingly", "willfully", and "violation, failure or refusal" have no counterpart in the Federal program and were applicable only to rules concerning individual civil penalties in New Mexico's program.

Therefore, the Director finds that New Mexico's proposed deletion, at 19.8.31.3109.A(1), (2), and (3) NMAC, of the definitions of "knowingly," "willfully," and "violation, failure or refusal" is consistent with New Mexico's proposed definitions of "knowing and knowingly" and "willful and willfully," and no less effective than the counterpart Federal definitions of "knowing and knowingly" and "willful and willfully" at 30 CFR 701.5. The Director approves New Mexico's proposed deletions of these terms.

2. 19.8.20.2010.A(2) NMAC, Sediment Control Measures and Water Quality Standards and Effluent Limitations. New Mexico proposes to delete 19.8.20.2010.A(2)(a) and (b) NMAC pertaining to the maintenance of sedimentation ponds.

19.8.20.2010.A(2)(a) NMAC. New Mexico proposed to delete a provision at paragraph (2)(a) which requires that sedimentation

ponds be retained to prevent gully erosion from occurring. New Mexico's existing rule at paragraph (2) requires, among other things, that sediment ponds be maintained until erosion on the regraded area has been controlled. The requirement in paragraph (2), to retain sediment ponds until erosion has been controlled, achieves the same purpose in the deleted provision at (2)(a). Therefore, New Mexico's proposal to delete the provision at 19.8.20.2010.A(2)(a) NMAC, is not necessary in New Mexico's program to ensure the appropriate use of sedimentation ponds.

19.8.20.2010.A(2)(b) NMAC. This provision, proposed for deletion, requires maintenance of sedimentation ponds to insure that the quality of the untreated drainage from the disturbed area meets the applicable State and Federal water quality standard requirements for the receiving stream, except during precipitation events which are equal to or greater than the 2-year recurrence interval. New Mexico explained that the provision proposed for deletion at 19.8.20.2010.A(2)(b) NMAC, contradicts New Mexico's rule at 19.8.20.2010.B(1) NMAC, which provides for discharges from disturbed areas to exceed the effluent limitations of 19.8.20 NMAC, if the discharge (1) resulted from a precipitation event equal to or larger than a 10-year 24-hour precipitation event and (2) is from facilities designed, constructed, and maintained in accordance with the

requirements of 19.8.20 NMAC.

In addition, New Mexico's existing rule at 19.8.20.2010.C NMAC requires, among other things, that a permittee must install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area so that it complies with all Federal and State laws and regulations and the limitations of 19.8.20 NMAC.

Therefore, New Mexico's proposed deletion of 19.8.20.2010.A(2) (a) and (b) NMAC clarifies their program by removing language that is either contradictory of existing requirements at 19.8.20.2010.B(1) NMAC, or repetitive of existing requirements at 19.8.20.2010.C NMAC.

The Federal counterparts to New Mexico's rules proposed for deletion at 19.8.20.2010.A(2) (a) and (b) NMAC are found at 30 CFR 816.42 and 30 CFR 816.45(a) (2). The counterpart Federal regulations at 30 CFR 816.42 require that discharges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434. The Federal regulations at 40 CFR

Part 434, similar to those in the New Mexico program, provide for exemptions from the requirement to meet effluent standards. The counterpart Federal regulations at 30 CFR 816.45(a)(2) require appropriate sediment control measures be maintained to, among other things, meet the more stringent of applicable State or Federal effluent limitations.

OSM finds that New Mexico's proposed deletion of 19.8.20.2010.A(2)(a) and (b) NMAC, in conjunction with New Mexico's existing rules at 19.8.20.2010.A(1), A(2), B(1), and C NMAC, is consistent with and no less effective than the requirements of the Federal regulations at 30 CFR 816.42, concerning the need for runoff from disturbed areas to meet applicable water quality effluent standards, and 30 CFR 816.45(a)(2), concerning the requirement for adequate sediment control measures. The Director approves proposed rule 19.8.20.2010.A.2 NMAC.

#### **IV. Summary and Disposition of Comments**

##### Public Comments

We asked for public comments on the amendment (Docket ID Nos. OSM-2010-0014-0001 and OSM-2010-0014-0008), but did not receive

any.

#### Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (Docket ID No. OSM-2010-0014-0008). We received two comment letters. We received one comment letter from the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), dated February 24, 2011 (Docket ID No. OSM-2010-0014-0009). The NRCS stated that they had no comments on the proposed rulemaking. We received one e-mailed comment from the U.S. Department of Energy (DOE), dated March 15, 2011 (Docket ID No. OSM-2010-0014-0010). The DOE stated that they had no comments on the proposed rulemaking.

#### Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to obtain concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.).

None of the revisions that New Mexico proposed to make in this amendment pertains to setting air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Docket ID No. OSM-2010-0014-0008). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Although the revisions that New Mexico proposed to make in this amendment would not have effects on historic properties, on January 25, 2011, we nonetheless requested comments from the SHPO and ACHP on New Mexico's amendment (Docket ID No. OSM-2010-0014-0008). However, we did not receive responses from the SHPO or ACHP.

**V. OSM's Decision**

Based on the above findings, we approve New Mexico's September 1, 2010, amendment.



To implement this decision, we are amending the Federal regulations at 30 CFR Part 931, which codify decisions concerning the New Mexico program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## **VI. Procedural Determinations**

### Executive Order 12630 - Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

### Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

#### Executive Order 12988 - Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### Executive Order 13132 - Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from

the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

#### Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

#### Executive Order 13211 - Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a

rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) et seq.).

#### Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

#### Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

April 18, 2011

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Allen D. Klein  
Director,  
Western Region

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Date

Editorial Note: This document was received at the Office of the  
Federal Register on January 25, 2012.

For the reasons set out in the preamble, 30 CFR part 931 is amended as set forth below:

PART 931 - NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 931.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* *	
September 1, 2010	<u>[Insert date of publication in the Federal Register]</u>	19 NMAC 8.1.7.K; 8.1.7.O(8) (a) and (b); 8.1.7.W(2) (a) and (b); 8.7.701.C(3);



	<p>8.11.1105.E; 8.11.1105.F; 8.11.1114; 8.11.1119.A through H; 8.11.1120.A through C; 8.11.1121.A, through D; 8.20.2010.A(2)(a) and (b) (deletion); 8.30.3000.L; 8.30.3003.D; 8.30.3004.D; 8.31.3103.A; 8.31.3109.A; 8.31.3109.A(1) through (3) (deletion); 8.31.3113.A, B, and C; 8.34.3402.F(1) and (2); 8.34.3408.C(2) and (3); and 8.35.13.</p>
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01/30/2012]